

Book IX.
Title XIII.

Concerning the ravishment of virgins or widows or nuns.
(De raptu virginum seu viduarum nec non sanctimonial.)

Bas. 60.58.1.

9.13.1. Emperor Justinian to Hermogenes, Master of the Offices.

We decree that ravishers of respectable or free-born virgins, whether betrothed or not, and of widows of all kinds, including freedwomen and the slaves of others, shall, guilty the worst of crimes, be visited with capital punishment, especially if the virgins or widows were dedicated to God, since the crime committed in that case is not only an outrage on men, but is also in mockery of the Omnipotent God himself, particularly because corrupted virginity or chastity cannot be restored. And they are deservedly condemned to the punishment of death, because ravishers of this sort are also guilty of murder. 1. In order, therefore, that such reckless conduct may not increase through lack of punishment, we ordain by this general law that those who commit a crime of this kind, and those who assist them at the time of the seizure, may, if they are discovered in the act of ravishment itself, and are seized during the commission of the crime, be killed, as convicted criminals, by the parents of the virgins or widows, free-born or otherwise, or by their relatives, guardians, curators, patrons or masters. 1a. We ordain that this shall be true so much more as to those who dare to ravish married women, because they are guilty of a double crime, adultery and ravishment, and the crime of adultery should, for this addition, be punished the more severely. 1b. We also number among such criminals the man who attempts to forcibly ravish the woman who is betrothed to him. 1c. If the ravisher, after the commission of such detestable crime, has been able to defend himself or escape by flight, the exalted praetorian prefects and the glorious city prefect in this imperial city and the eminent praetorian prefects of Illyria and Africa, in the provinces, as well as the masters of the soldiery in the various regions of our empire, also the worshipful prefect of Egypt, the count of the Orient, the vicars and proconsuls and all the worshipful dukes and the honorable rectors of the provinces, and all other judges of whatever rank, found in the places, shall be equally zealous and solicitous to arrest them, and after lawful proof, recognized by law, and without giving them any right to object to the place of trial, punish those seized in (guilty of) such crime with the severest punishment and condemn them to death. 1d. Nor shall they, according to the ancient law of Constantine, have any right to appeal, if they wish to do so. 1e. If the women who have been ravished are slaves or freedwomen, their ravishers shall be visited only with the aforesaid punishment, without loss, however, of their property. 1f. But if such crime is perpetrated on a free-born woman, the judges, with the help of the parents, husbands, guardians or curators, must take care that all of the property, movable, immovable and self moving, of the ravishers and of those who gave them aid, becomes that of the women ravished. 1g. If such women are unmarried and free-born and they will marry someone other than the ravisher, such property, or as much thereof as they wish, may be given as their dowry. But if they want no husband and wish to retain their maidenly chastity, they shall have complete ownership of such property and no judge or other person shall

undertake to prevent this. 2. The ravished virgin or widow, or other woman, shall have no right to demand her ravisher as her husband, but her parents may unite her in lawful marriage to any man they wish, excepting the ravisher, since Our Serenity will in no manner and at no time comply with the wish of those who, in our republic, seek a marriage in a hostile manner. For whoever wants to marry a woman, whether free-born or a freedwoman, should, according to our laws and ancient custom, go to the parents or other proper person and enter into a lawful marriage with their consent. 3. The punishment herein mentioned, that is to say, that of death and loss of property, shall be inflicted not only on the ravishers but also against their attendants in the attack and ravishment. 3a. All other abettors of the crime or persons who give shelter or any aid to them, whether male or female, and of whatever station, grade or rank, shall be subject to capital punishment (without loss of property), and they shall all pay this penalty whether such crime was perpetrated with or against the will of the virgins or other women. 3b. For if the ravishers, through fear of the severity of the punishment, refrain from this crime, no opportunity for sinning is left to the woman, willing or unwilling, since her very wish to sin is induced by the wiles of the wicked man who contemplates ravishment. Unless he urges her, unless he circumvents her by odious artifices, he would not induce her to consent to such dishonor. 3c. If the parents, who are most concerned in the punishment, show forbearance, or lay aside their grief, they shall be punished by deportation. 4. If any of the persons who aid in this crime are slaves, we order that they shall be burned to death, without distinction as to sex, as provided by the law of Constantine (C. Theod. 9.24.1.5). 5. All provisions of the Julian law as to ravishment of virgins, widows or nuns contained in the ancient books of law or in imperial constitutions, shall not be in force in the future, and this law alone shall be sufficient on this subject for all, and which shall also apply to nuns, whether virgins or widows. Given at Constantinople November 17 (533).

Note.

In Inst. 4.18.4, it is said that the lex Julia "inflicts penalties on anyone who without using violence seduces virgins or widows of respectable character. If the seducer be of reputable condition, the punishment is confiscation of half his fortune; if a mean person, flogging and relegation." The penalty there prescribed is, therefore, lighter than that for rape. When the foregoing constitution, accordingly, speaks of consent to rape on the part of the woman, the law contemplates something different than mere carnal intercourse with the woman. The explanation lies in the fact that raptus and rapere in Latin had a double meaning, as ravishment or rape and ravishing or raping has with us. The primary meaning was "abduction" and "abduct" by force. Hence the foregoing punished abduction of a woman for the purpose of carnal intercourse, or, in the case of widows and virgins, for the purpose of marriage. It was in part the aim of this law not to permit any marriage except with the consent of the father. Many provisions of this law are found in C. 1.3.53, which, however, refers only to nuns. These comments apply in connection with Novel 150.

Prior to the time of Constantine, the abduction of women for the purpose mentioned, if not accompanied by violence, was regarded as a private injury which entitled the father or husband to bring an action. Gothofredus ad. C. Th. 9.24.1; 2 Bury, Hist. L. R. Empire 411. Constantine made it a most heinous crime. Mommsen, Strafrecht, 701-2. If the nurse who was in charge of a girl was proved to have

encouraged her to yield to a seducer, molten lead was to be poured into her mouth and throat to close the apertures through which the wicked suggestions had emanated. The woman too, if she consented, was subjected to the same punishment as the ravisher, but Justinian, by his later law, apparently relieved her from all punishment, unless, doubtless, when she was a married woman, in which case she was guilty of adultery. (See Mommsen, supra, 702.) This, and the laws on adultery and unnatural crime, have led an historian to say: "In contrast with this conservatism (of the earlier time), a new spirit animated Constantine and his successors in their legislation on sexual offenses, and the inhuman rigor of the laws by which they attempted to suppress sexual immorality amazes a modern reader of the Codes of Theodosius and Justinian." 2 Bury, supra, p. 410. The author further states that this legislation was due to ecclesiastical influence and the prevalence of extravagant ascetic ideals. Do p. 412.